



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0177; FRL-10003-44-Region 6]**

### **Air Plan Approval; New Mexico; City of Albuquerque-Bernalillo County; New Source Review (NSR) Preconstruction Permitting Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County submitted on January 18, 2018, that includes supplemental information provided on April 30, 2019. The EPA is approving newly adopted Minor New Source Review (MNSR) permitting regulations which waive specific permitting requirements for certain sources and create new procedures for authorizing construction and modification of these sources.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2018-0177. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** Rick Barrett, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Dallas, TX. 75270, 214-665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov).

To inspect the hard copy materials, please schedule an appointment with Rick Barrett or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our June 5, 2019 proposal (84 FR 26057). In that document we proposed to approve revisions to the City of Albuquerque-Bernalillo County SIP submitted on January 18, 2018, including supplemental information provided on April 30, 2019. The revisions addressed in our proposal included newly adopted Minor New Source Review (MNSR) permitting regulations which waive specific permitting requirements for certain sources and create new procedures for authorizing construction and modification of these sources. The revisions created procedures which allow owners and operators of eligible gasoline dispensing facilities (GDF), and emergency stationary reciprocating internal combustion engines (ES-RICE), to apply for an Air Quality Notification (AQN) rather than a construction permit. The SIP action proposes no change in emission levels or controls, and will not result in an increase of emissions or ambient concentration of any compounds.

We received comments on the proposal from several commenters. The full text of the comment letters received during the public comment period, which closed on July 5, 2019, is included in the publicly posted docket associated with this action at *www.regulations.gov*. The EPA provides a summary of the comments received and corresponding responses below.<sup>1</sup>

## **II. Responses to Comments**

**Comment:** Several commenters stated that before any decision is made on the proposal, the City of Albuquerque Environmental Health Department (EHD) should come to their communities and give the residents of Albuquerque and Unincorporated Bernalillo County, neighborhood associations, coalitions, and interested persons an opportunity to learn about the proposal, participate in a discussion, get questions answered, and express concerns in a public meeting forum in English and Spanish.

They further stated that the EHD did not notify the residents of Albuquerque and Unincorporated Bernalillo County of their proposal; did not conduct any public meetings with neighborhood associations, coalitions or the public; and did not post on their website their proposal to EPA to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County.

**Response:** EPA regulations require that states must provide the public with notice of plans or plan revisions, opportunity to submit written comments, and either automatically hold a public hearing on the proposed plan or revision or provide the public with the opportunity to request such a public hearing. See 40 CFR 51.102. Notice should include making the proposed plan or

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<sup>1</sup> Note that comments are grouped together into categories to assist the reader.

revision available for public inspection in at least one location in each region to which it will apply. See 40 CFR 51.102(d)(2). A notice of public hearing to consider the EHD Petition for rulemaking was published on September 26, 2017, in the New Mexico Register and in the Albuquerque Journal on the same day. See Attachment C, 4. Pleadings filed with Air Board. The notice met all the applicable Federal regulations. It solicited written comments and contained the date, place, and time of the hearing. The notice also stated that the public could obtain the reasoning for EHD's proposed rulemaking, the rulemaking record of the EHD, and drafts of the proposed regulatory changes on EHD's website.<sup>2</sup> Additionally, the notice, which was published in the New Mexico Register and the Albuquerque Journal, provided a link to the agenda for the hearing. As noted in the public notices published in the two local newspapers, on November 8, 2017, a public hearing was held in accordance with State and local law and the applicable public hearing requirements. EHD considered all the comments it received and discussed these in its hearing testimony. Public comments were made via letters, emails and in testimony prior to, and during, the November 8, 2017, hearing. See Attachment C, 2. Public Comment, and Attachment C, 4. Pleadings filed with Air Board.

Furthermore, on May 30, 2017, before the formal public notification discussed above, EHD sent copies of a draft of the proposed regulations to Albuquerque and Bernalillo County neighborhood associations; persons holding air quality permits for GDF or ES-RICE; and members of the community on the email list-serve of the Air Board.<sup>3</sup> EHD's cover letter invited these stakeholders to two public comment meetings held on June 28, 2017, one held in the afternoon and one in the evening. Four people attended the afternoon meeting. No one attended

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<sup>2</sup> See <http://www.cabq.gov/airquality/air-quality-control-board>, at the link entitled "Library of current Rulemaking Petitions and all related documents."

<sup>3</sup> See Attachment C, 4. Pleadings filed with Air Board.

the evening meeting.<sup>4</sup> EHD received four written comments on its draft regulations. An announcement of the petition filing was distributed by email to the list-serve of the Air Board on August 29, 2017. This early engagement is not required by the EPA rules.

Under these circumstances we do not agree with the commenters' assertion that EHD did not notify the residents of Albuquerque and Unincorporated Bernalillo County of their proposal, and we do not agree that we should not approve the plan revisions for a purported lack of adequate notice or opportunity to comment.

**Comment:** Several commenters stated that they want EPA to disapprove the SIP revision because it does not respect the basic human rights of residents of Albuquerque to be treated with fairness, decency, and respect, nor their basic right to due process in the decision-making that affects their communities. They requested that EPA remand the proposed regulations back to Albuquerque - Bernalillo County Air Quality Control Board to amend its request in order to address public participation, public health, the locating of multiple source emitters close to each other, and address appeal rights.

Additionally, several commenters stated that public participation should not be considered a burden and expressed concern about the long term physical and emotional health effects of the proposal, especially for the more vulnerable members of the population—the elderly and children. Commenters claimed that EPA's position is that since Albuquerque is in compliance with the National Ambient Air Quality Standards (NAAQS), public participation in Minor New Source Review process is not necessary, stating that such rationale is not respectful of the community living in this area that is subjected to the worst air quality in the city and does

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<sup>4</sup> See Attachment C, 4. Pleadings filed with Air Board.

not take into consideration environmental justice principles. They further allege that both EPA and EHD failed to take public health into consideration, and as a consequence, the public will be affected by emergency room visit costs, and long-term health implications that affect school and work attendance.

**Response:** The comments that pertain to public participation have been addressed in a response above. In short, the EPA does not agree that there was a failure to comply with the public notice and comment-related provisions of the Act or the relevant EPA regulations and does not agree that the revisions should be disapproved because of the comments relating to an asserted lack of public participation. Regarding the commenters' other requests that EPA deny or remand the EHD's SIP revision, EPA is required to approve a SIP revision if it meets all the applicable Federal requirements. See CAA 110(k)(3). As noted in our proposal, in addition to the preconstruction permitting program requirements of CAA section 110(a)(2)(C) and 40 CFR 51.160 through 51.164, our evaluation must ensure that the proposed plan revisions comply with section 110(l) of the CAA, which states that the EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the Act. Thus, under CAA section 110(l), the proposed MNSR SIP revision must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. The commenters misstate and oversimplify EPA's position. It is not our position that public participation in the Minor New Source Review process is not necessary because Albuquerque is in compliance with the NAAQS. EPA's statutory responsibilities in reviewing a SIP are to ensure it meets all the applicable requirements of the Act and the corresponding Federal regulations. CAA section

110(a)(2)(C) requires regulation of the modification or construction of any stationary source within the areas covered by the SIP as necessary to assure that the NAAQS are achieved. The minor NSR regulations found at 40 CFR 51.160 through 51.164 specify the legally enforceable procedures and requirements which are applicable to state minor NSR programs. Federal regulations allow states to identify the types and sizes of facilities, buildings, structures, or installations which will be subject to review under the minor NSR program. See 40 CFR 51.160(e). To determine whether a specific source type can be exempted from complying with a state's approved minor NSR program, EPA must examine whether the state has provided an adequate basis that the exempt emissions do not need to be reviewed to ensure attainment and maintenance of the NAAQS in the particular geographic areas covered by the program because they are inconsequential to attainment or maintenance, considering the particular air quality concerns in such areas. See 40 CFE 51.160(a) and (e) and CAA section 110(l). Additionally, our evaluation must ensure that the submittal complies with section 110(l) of the CAA before it can be approved into the SIP.

Similar to the exemptions provided for in EPA's Tribal NSR Rule, EHD seeks to exempt a small percentage of the total emissions emitted within its jurisdiction from minor NSR review. EPA estimates that GDFs are responsible for only 0.28% of the total emissions of volatile organic compounds (VOC) in Albuquerque-Bernalillo County. This percentage is not anticipated to change with the approval of the SIP revision. VOC emissions from GDF and ES-RICE are federally regulated by the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for GDF found in 40 CFR part 63, subpart CCCCCC; and by the NESHAP for ES-RICE found in 40 CFR part 63, subpart ZZZZ. State regulatory requirements for GDF and ES-RICE emissions of VOC are found at State regulation 20.11.65 NMAC - Volatile Organic

Compounds. These Federal and State regulations impose emission limitations, management practices, and testing and monitoring requirements in order to demonstrate compliance with those requirements.

For GDF with throughput of more than 100,000 gallons per month, the applicable Federal regulation (40 CFR part 63, subpart CCCCCC) reduces emissions by about 90% by requiring the use of Stage I vapor control. While smaller GDF are not required by Federal regulations to use Stage I vapor control, the Air Board's regulations (20.11.65 NMAC - Volatile Organic Compounds) requires most GDF with underground storage tanks larger than 3000 gallons to have Stage I vapor control. This captures many of the GDF with throughputs below 100,000 gallons per month. As a result, between Federal and local regulations, most GDF have pollution controls that reduce their emissions by about 90%. The only ones that do not have these controls are the very small GDF (typically small fleet owners) with low throughput and associated limited potential to emit pollutants which are hazardous to human health and wellbeing.

Regarding ES-RICE, the pollutants which are emitted from ES-RICE and may be relevant to NAAQS attainment are: ozone, NO<sub>2</sub>, PM, CO and SO<sub>2</sub>. There are approximately 445 ES-RICEs in the County, and the applicable regulations only permit them to operate during emergencies, other than the few hours which are necessary each year to test and maintain the engines. See Attachment C, 4. Pleadings filed with Air Board. Because these emergency generators operate very few hours a year, their emissions are very low. When applying EHD's actual emission inventory estimates of 24 hours per year of operation, each ES-RICE will only emit about 0.26 tons per year (tpy) of combined pollutants.<sup>5</sup>

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<sup>5</sup> When using an assumed maximum of 500 hours of operation per year for each ES-RICE, EPA has previously concluded that a 500 hours per year limit would result in combined pollutant (NO<sub>2</sub>, PM, CO and SO<sub>2</sub>) emissions of 5.5 tons per year or less from each ES-RICE. See 78 FR 15296 (March 11, 2013).



Emissions from these source categories are low enough that it is unlikely that such emissions would have a meaningful impact on continued NAAQS attainment. Moreover, the SIP revisions do not change or eliminate any of the controls required by NESHAP, and the approval of these SIP revisions does not obviate the need for GDF and ES-RICE sources to comply with all applicable NESHAP requirements—including emissions limitations. See Attachment C, 4. Pleadings filed with Air Board.

Concerning the public health considerations mentioned by the commenters, EPA was required by the CAA to promulgate NAAQS for pollutants which are considered harmful to public health. The CAA identifies two types of NAAQS—primary and secondary. The primary standards provide public health protection, including the protection of sensitive populations such as asthmatics, children, and the elderly. All areas within EHD’s jurisdiction are currently in attainment for all NAAQS. See Attachment C, 4. Pleadings filed with Air Board, and 82 FR 29421 (June 29, 2017). The approval of this SIP revision will not cause any degradation of air quality, and EHD was legally obligated to demonstrate this fact to the EPA. Appendix V to 40 CFR part 51 requires that EHD submit to the EPA a demonstration that will show noninterference with the attainment of the NAAQS under Section 110(1) of the Clean Air Act. The Section 110(1) demonstration submitted to EPA showed that there will be no degradation of air quality and that Bernalillo County will continue its attainment status of the NAAQS to protect public health. See our proposal, 84 FR 26057, section III.C.

In their SIP submittal, EHD presented NAAQS monitoring data for each pollutant emitted by GDF and ES-RICE showing the concentration of each in the ambient air in the County compared to the relevant Federal standard. The data show the County area has been in attainment for all the NAAQS for at least the past ten years and has not been in violation of any

NAAQS since 1996. The County has maintained attainment for the NAAQS the entire time during which Federal NESHAP emission requirements for these source categories have been in effect. EHD's proposal will not change those requirements, and thus, would not result in an increase in emissions. Review of the EHD NAAQS monitoring data showed that concentrations of most pollutants have trended downward or remained steady over at least the last ten years. These trends support that the air quality is improving overall in the County. See our proposal, 84 FR 26057, section III. C., and Attachment C, 4. Pleadings filed with Air Board. Therefore, we find that EHD's proposal will not interfere with attainment of any NAAQS. See Attachment C, 4. Pleadings filed with Air Board.

Based on these historical trends and supporting air quality monitoring data documenting air quality improvements throughout the State, we believe the proposed Minor NSR SIP revision meets the requirements of CAA section 110(l), and that the implementation of these rules will not interfere with any applicable requirement concerning attainment, reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

Although qualifying GDFs and ES-RICEs will now be exempt from the Minor NSR program, EHD will post on its website all Air Quality Notifications (AQN) issued during the previous month and all those issued that are currently active. See 20.11.39.15 NMAC. This information will include the name and location of each facility. It will also include information enabling members of the public to contact EHD about any AQN it has issued. Thus, the public will have access to the information for any GDF or ES-RICE that EHD has issued an AQN.

Comments regarding the locating of multiple source emitters close to each other are addressed in the last response below.

**Comment:** Commenters stated that this proposed change is the latest effort to hinder public participation and further stated that perhaps informing the public, diligent review, and doing the job that taxpayers have paid staff at the Albuquerque Environmental Health Department to do is too burdensome.

**Response:** As discussed, above, in response to other comments, the EPA is required to approve SIP revisions that meet all applicable requirements, and the EPA has determined that these revisions meet such requirements. As also discussed, above, the EPA has determined that the submission reflects satisfaction of the public participation-related provisions of the Act and EPA's relevant regulations. In any event, regarding the comments which stated that the EHD approved the rule in order to relieve its administrative burden, EHD indicated that their proposed regulations are needed to allow EHD permitting staff to focus on permitting of larger sources with more significant air quality impacts, for which the applicable regulatory scheme provides more discretion and requires more technical judgment than the regulations that apply to GDF and ES-RICE. EHD also stated that the process associated with GDF permits has caused significant opportunity costs for the EHD that are not justified based on the amount of emissions produced by GDF. See Attachment C, 4. Pleadings filed with Air Board.

The EHD explained that GDF and ES-RICE represent a minimal potential contribution of pollutants to local air quality compared to emissions from other sources. Their experience has shown that a majority of permitting staff time has been devoted to managing the process required by existing Part 41 (11-20-41) for permit applications for these less significant contributors. EHD said that about 80% of their permit staff resources are spent in permitting these two source categories and devoting the majority of an air quality agency's permitting resources to sources

with minimal impact on air quality is not a wise use of resources. EHD has determined that this imbalance in resource allocation does not serve the public interest because it distracts EHD from a focus on larger facilities with more potential to impact air quality, and, as explained above, EPA is required to approve all SIP revisions that meet the applicable requirements.

**Comment:** Some commenters stated that the proposed rule does not require air dispersion modeling, referring to a statement in EHD's proposal that "the department shall not require any Part 39 source to submit air dispersion modeling with its AQN application".

**Response:** As noted, above, in response to other comments, VOC emissions from GDF and ES-RICE are inconsequential. Neither GDF nor ES-RICE require air quality dispersion modeling. GDFs emit VOCs in quantities which do not require modeling because their VOC emissions are less than the EHD minor NSR threshold level of 10 lbs/hr or 25 tpy. Their VOC emissions are modeled county-wide as an ozone component to determine whether they are in compliance with the ozone NAAQS.

ES-RICEs do not require modeling because of their infrequent and unpredictable hours of operation. Air quality dispersion modeling is done to predict the impact of expected emissions. The operation of an emergency generator is inherently unpredictable because it operates only during emergencies except for the few hours an engine must be operated periodically to maintain the engine's functionality. Thus, the necessary input to a model (the expected emissions) cannot be accurately provided to the modeler. Thus, modeling is not useful for emergency engine operation.

Recently, the EHD entered into a new contract with Sonoma Technology, Inc. (STI) to prepare the *Albuquerque/Bernalillo County Ground-Level Ozone Photochemical Modeling and Analysis*. This modeling study will emphasize ozone source contribution analysis to: identify source contributions from mobile, industrial/stationary sources, and biogenic emissions; evaluate transport (international, interstate, and intrastate) versus local emissions contributions; evaluate events versus local emissions contributions to ozone; conduct VOC/NO<sub>x</sub> sensitivity analysis of ozone levels in Albuquerque-Bernalillo; and address other scenarios. This updated modeling will give EHD the most recent scientific analysis based on the most recent air quality information with which to determine what control strategies, if any, might be appropriate to protect Albuquerque-Bernalillo County attainment with the new 2015 ozone standard.

**Comment:** One commenter stated that they oppose approval of the SIP revision submitted by the EHD which waives permitting requirements for GDF because the EHD did not provide adequate justification for its request in 2017. The commenter alleges that EPA mischaracterizes the NAAQS ozone data as trending downward when the values appear to fluctuate. The commenter further stated that it is possible that the ozone data for 2017 and 2018 would show increases, with levels exhibiting a cyclic pattern and the same could be said for nitrogen dioxide. The commenter stated that there have been at least two years of particulate matter (PM<sub>10</sub>) violations within the last 10 years, and that the most recent (2016) finding for sulphur dioxide shows a secondary violation. Further, the commenter claimed that the EPA staff recommendation for approval is not supported by adequate evidence.

**Response:** We do not agree with the commenter that the EHD did not provide adequate justification for its proposal request. As explained above, in order to determine whether a specific source type can be exempted from complying with a state's approved minor NSR program, EPA must examine whether the state has provided an adequate basis that the exempt emissions do not need to be reviewed to ensure attainment and maintenance of the NAAQS in the particular geographic areas covered by the program because they are inconsequential to attainment or maintenance, considering the particular air quality concerns in such areas. GDF and ES-RICE make up 62.2% of the 1088 authorized stationary sources in Albuquerque-Bernalillo County. See Attachment C, 4. Pleadings filed with Air Board. As we noted in our proposed approval, the only pollutants emitted from GDFs are VOC. The VOC emitted from GDFs account for only about 0.28% of the VOC in the entire County. Each ES-RICE only emits about 0.26 tpy of VOC, NO<sub>2</sub>, PM, CO and SO<sub>2</sub> combined. Therefore, these sources generate emissions that are inconsequential to the area's ability to attain the NAAQS.

As noted, above, in response to other comments, a majority of EHD permitting staff time is spent on permits for GDF and ES-RICE although, relatively, they contribute very little to overall air pollution, and EHD determined that devoting most of its time to sources that have an inconsequential impact on air quality is not an effective use of public resources. See Attachment C, 4. Pleadings filed with Air Board. Further, GDF or ES-RICE which are located at a major source, or at a facility which requires an air quality construction permit because of other activities, would not be eligible for an AQN.

The SIP revision imposes the same air quality control requirements on GDF and ES-RICE as is currently applied through issuance of individualized permits and contains compliance

mechanisms to assure that enforcement actions can be brought against owners or operators of these sources which receive an AQN. See Attachment C, 4. Pleadings filed with Air Board.

EHD's proposal will improve EHD's permitting process by allowing it to dedicate more time to its larger and more complex air quality sources where more discretion and technical judgment are required. EHD's proposal does not result in any changes to the existing substantive air quality requirements for GDF and ES-RICE that are governed by NESHAP. See Attachment C, 4. Pleadings filed with Air Board. As explained in a response above, the SIP revision meets all Federal requirements for minor new source review and the requirements of section 110(l) of the Clean Air Act.

We disagree that we mischaracterized the NAAQS ozone data. As we discussed in our proposed approval, compliance with the 8-hour ozone standard has improved county-wide with ozone pollutant concentrations trending downward since the late 1980's. See EPA's Air Quality System (AQS) database. As shown on Table 1 in the proposal, the ozone concentration has declined overall from 0.073 ppm in 2006 to 0.065 ppm in 2016. See our proposal, 84 FR 26057, section III.C., page 26060. Further, local ambient ozone levels have been in decline since the 2010-2012 design value assessment period, and ozone concentrations since 2006 have remained below the Federal standard in effect at the time. EPA has amended the ozone NAAQS over time, lowering the concentration necessary for attainment. In 1997, EPA set the concentration at 0.084 parts per million. In 2008, EPA changed this to 0.075 parts per million. In 2015, EPA changed it again to 0.070 parts per million. Albuquerque and Bernalillo County have remained in continuous compliance with each new standard promulgated by EPA, and continue to be in compliance for 2017 and 2018. See <https://www.epa.gov/air-trends/air-quality-design-values>.

With regard to Nitrogen Dioxide (NO<sub>2</sub>) levels, compliance with the 1-Year NO<sub>2</sub> and 1-hour NO<sub>2</sub> standards has improved county-wide with NO<sub>2</sub> pollutant concentrations trending downward since the late 1990's. The NO<sub>2</sub> levels have remained relatively stable for the last decade overall for both the 1-hour and annual standards. As shown on Table 2 in the proposal, the NO<sub>2</sub> concentration has declined overall from 15.4 parts per billion (ppb) in 2006 to 10.4 ppb in 2016. At no time in that period have levels exceeded either the 1-hour or annual standard. Rather, levels have consistently remained well below the ambient air concentrations specified by the standard of 53 ppb. Furthermore, ambient NO<sub>2</sub> levels have been in decline since the 2011-2012 design value assessment period, and NO<sub>2</sub> concentrations since 2006 have remained well below the Federal standard in effect. NO<sub>2</sub> data from any years post-2016 were not yet available when the EHD proposed regulations were finalized.

We disagree that there have been at least two years of particulate matter (PM<sub>10</sub>) violations within the past 10 years. The PM<sub>10</sub> standard is not expressed as a simple concentration. Instead, EPA set a 24-hour concentration of 150 micrograms per cubic meter (mg/m<sup>3</sup>) and then established that the standard would be attained if the number of days per calendar year with a 24-hour average concentration above 150 mg/m<sup>3</sup> is equal to or less than one when averaged over three calendar years. The two readings greater than 150 mg/m<sup>3</sup>, when averaged over three calendar years each, are below the standard of 150 mg/m<sup>3</sup>. As shown in Table 4, PM<sub>10</sub> levels in the County area (as measured by the second highest 24-hour average per year) have fluctuated between 102 mg/m<sup>3</sup> and 153 mg/m<sup>3</sup> over the last decade. Also, the overall trend over the last decade is relatively stable and has been below the standard of 150 mg/m<sup>3</sup> on average. Albuquerque and Bernalillo County have remained in attainment for the PM<sub>10</sub> standard for the



entire period from 2006 to 2016 and have never been designated as nonattainment prior to that period, despite the dusty desert environment in which the city and county are situated. See Attachment C, 4. Pleadings filed with Air Board.

We disagree that the most recent (2016) design value for the sulfur dioxide (SO<sub>2</sub>) level shows a secondary violation. Table 6 in our proposed approval shows SO<sub>2</sub> design values and how they compare to the 1-hour primary NAAQS standard, not the 3-hour secondary standard. The maximum permissible concentration under the 1-hour primary standard is 75 parts per billion (ppb). The maximum permissible concentration under the 3-hour secondary NAAQS standard is 0.5 parts per million (ppm). As the design value is only 6 ppb for the 1-hour NAAQS for 2016 and the previous 3 years are only 5 ppb each, the SO<sub>2</sub> design values are well below any violation of the primary standard of 75 ppb or the secondary standard of .5 ppm. Note that on Table 6 in our proposal, the design value for each year is actually measured in ppb, not in mg/m<sup>3</sup> as shown.

**Comment:** Some commenters stated that there is a failure to assess the effect of the recently changed zoning and land use ordinances of the City of Albuquerque on where, and how many, gasoline stations may be located near and within residential areas.

**Response:** Neither the CAA nor the corresponding Federal regulations specifically require that EPA assess the effect of local zoning and land use ordinances when determining whether to approve a minor NSR SIP revision. Rather, EPA is required to ensure that the revision complies with the applicable requirements found in CAA 110(a)(2)(C), CAA 110(l), 40 CFR part 51, subpart I, 40 CFR part 51, subpart F, and appendix V to 40 CFR part 51. We have explained in

the responses above, and in our proposed rulemaking, how the SIP revision meets the requirements of CAA 110(a)(2)(C), CAA 110(l), 40 CFR part 51, subpart I, 40 CFR part 51, subpart F, and appendix V to 40 CFR part 51. Appendix V to 40 CFR part 51 requires that states who submit SIP revisions to EPA for approval provide evidence that they have the necessary legal authority under state law to adopt and implement the plan. EHD provided evidence of this authority. See Attachment C, 4. Pleadings filed with Air Board.

### **III. Final Action**

We are approving the revisions to the City of Albuquerque-Bernalillo County Minor NSR program dated January 18, 2018 that includes supplemental information provided on April 29, 2019 as proposed. The revisions were adopted and submitted in accordance with the requirements of the CAA and the EPA's regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the City of Albuquerque-Bernalillo County Minor NSR program are consistent with CAA section 110(l), the EPA's regulations at 40 CFR 51.160 – 51.164 and the associated policy and guidance. Therefore, under section 110 of the Act, the EPA approves into the New Mexico SIP for the City of Albuquerque-Bernalillo County the following revisions adopted on November 8, 2017, and submitted to the EPA on January 18, 2018:

- Addition of 20.11.39 NMAC PERMIT WAIVERS AND AIR QUALITY  
NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES
- 20.11.39.1 NMAC Issuing Agency
- 20.11.39.2 NMAC Scope
- 20.11.39.3 NMAC Statutory Authority

- 20.11.39.4 NMAC Duration
- 20.11.39.5 NMAC Effective Date
- 20.11.39.6 NMAC Objective
- 20.11.39.7 NMAC Definitions
- 20.11.39.8 NMAC Variances
- 20.11.39.9 NMAC Savings Clause
- 20.11.39.10 NMAC Severability
- 20.11.39.11 NMAC Documents
- 20.11.39.12 NMAC Permit Waivers
- 20.11.39.13 NMAC Requirements for Source Categories to Which Part 39 Applies
- 20.11.39.14 NMAC Air Quality Notification Application
- 20.11.39.15 NMAC AQN Application Review
- 20.11.39.16 NMAC Transfer of Prior Authorizations to AQNs
- 20.11.39.17 NMAC Compliance and Enforcement
- 20.11.39.18 NMAC Amending and Air Quality Notification
- 20.11.39.19 NMAC Fees
- 20.11.39.20 NMAC AQN Cancellation
- 20.11.41 NMAC CONSTRUCTION PERMITS
- 20.11.41.2(E)(2) NMAC Additional Permit Requirements
- 20.11.41.2(G) NMAC Permissive Waiver

#### **IV. Incorporation by Reference**

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with 5 USC 552(a) and 1 CFR part 51, the revisions to the New Mexico, Albuquerque/Bernalillo County regulations, as described in the Final Action section above, are requirements incorporated by reference. We have made, and will continue to make, these materials generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact Rick Barrett for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2019.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG – New Mexico**

2. In §52.1620(c), the second table titled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by adding an entry in alphanumerical order for “Part 39 (20.11.39 NMAC)” and revising the entry for “Part 41 (20.11.41 NMAC)” to read as follows:

**§52.1620 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

<b>EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS</b>				
State citation	Title/Subject	State approval/effective date	EPA approval date	Explanation
* * * * *				
Part 39 (20.11.39 NMAC)	Permit Waivers and Air Quality Notifications for Certain Sources	1/18/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Part 41 (20.11.41 NMAC)	Construction Permits	1/18/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				

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[FR Doc. 2020-00286 Filed: 1/15/2020 8:45 am; Publication Date: 1/16/2020]